

1 HONORABLE RICHARD A. JONES
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 SIGNE BERGMAN,
11 Plaintiff,

12 v.
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14 IVAN MOTO,
15 Defendants.

CASE NO. 22-cv-00161-RAJ

**ORDER GRANTING
PLAINTIFF'S MOTION TO
DISMISS**

17 **I. INTRODUCTION**

18 This matter comes before the Court on Plaintiff's Motion to Dismiss. Dkt. # 23.

19 For the reasons below, the Court **GRANTS** Plaintiff's Motion.

20 **II. DISCUSSION**

21 Plaintiff brings tort claims against Defendant for assault and battery. *See* Dkt. # 1.

22 Defendant has counterclaimed for defamation and intentional infliction of emotional
23 distress. Dkt. # 22. Specifically, Defendant alleges that Plaintiff's "extreme and
24 outrageous conduct" consisting of falsely reporting sexual assault to the police inflicted
25 emotional distress. Defendant also sues for defamation. Plaintiff moves for dismissal for
26 failure to state a claim.

27 Fed. R. Civ. P. 12(b)(6) permits a court to dismiss a complaint for failure to state a

1 claim. The rule requires the court to assume the truth of the complaint's factual
 2 allegations and credit all reasonable inferences arising from those allegations. *Sanders v.*
 3 *Brown*, 504 F.3d 903, 910 (9th Cir. 2007). A court "need not accept as true conclusory
 4 allegations that are contradicted by documents referred to in the complaint." *Manzarek v.*
 5 *St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). The plaintiff must
 6 point to factual allegations that "state a claim to relief that is plausible on its face." *Bell*
 7 *Atl. Corp. v. Twombly*, 550 U.S. 544, 568 (2007). If the plaintiff succeeds, the complaint
 8 avoids dismissal if there is "any set of facts consistent with the allegations in the
 9 complaint" that would entitle the plaintiff to relief. *Id.* at 563; *Ashcroft v. Iqbal*, 556 U.S.
 10 662, 679 (2009).

11 A court typically cannot consider evidence beyond the four corners of the
 12 complaint, although it may rely on a document to which the complaint refers if the
 13 document is central to the party's claims and its authenticity is not in question. *Marder v.*
 14 *Lopez*, 450 F.3d 445, 448 (9th Cir. 2006). A court may also consider evidence subject to
 15 judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

16 **A. Defamation**

17 The elements of a cause of action for defamation in Washington are (1) a false
 18 statement; (2) lack of privilege; (3) fault; and (4) damages. *Herron v. KING Broadcasting*
 19 *Co.*, 112 Wash.2d 762, 768, 776 P.2d 98 (1989). Here, the allegations of defamation are
 20 largely conclusory, namely that Plaintiff made false statements that the Defendant abused
 21 and assaulted her to police. Dkt. # 22 at 7.

22 Under RCW 4.24.510, a person who communicates a complaint or information to
 23 any branch of government is immune from civil liability for claims based on the
 24 communication. Washington state and federal courts have affirmed that the statute
 25 provides immunity when persons report information to the police. *DiBiasi v. Starbucks*
 26 *Corp.*, No. 10-35213, 414 Fed. Appx. 948 (Mem) (9th Cir. 2011) (employee complaint to
 27 police regarding customer behavior was a matter of concern to the police); *Cornu-Labat*

1 *v. Merred*, No. 13-35158, 580 Fed. Appx. 557 (Mem) (9th Cir. 2014) (call to law
2 enforcement was protected from liability).

3 Further, even if Defendant had shown a defamation claim, he alleges only
4 conclusory allegations related to his damages. He fails to provide any specific facts to
5 show that any entity took adverse action against him because of the alleged false
6 statement. As such, Plaintiff fails to allege facts sufficient to meet the damages element
7 of a defamation claim. As requested, the Court permits leave to file a counterclaim for
8 abuse of process. Dkt. # 25 at 5.

9 **B. Intentional Infliction of Emotional Distress**

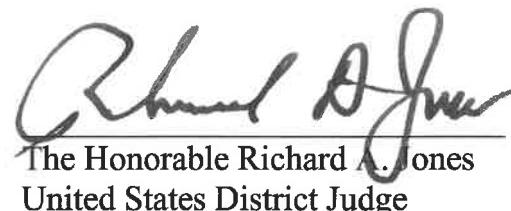
10 To prove outrage or intentional infliction of emotional distress, a complainant
11 must establish the following elements: (1) extreme and outrageous conduct, (2)
12 intentional or reckless infliction of emotional distress, and (3) the actual result of severe
13 emotional distress to the plaintiff. *Kloepfel v. Bokor*, 149 Wn.2d 192, 195, 66 P.3d 630
14 (2003).

15 The Court will also dismiss this claim. Washington courts have stated that seeking
16 legal process, even with malicious intent, was not “so outrageous in character, [and] so
17 extreme in degree, as to go beyond all possible bounds of decency,” and thus fails to
18 claim for intentional infliction of emotional distress. *Saldviar v. Momah*, 145 Wash.App.
19 365, 390 (2008) (filing suit alleging sexual abuse by a physician, even under false
20 pretenses, did not state claim for outrage). Accordingly, Defendant fails to state a claim
21 for intentional infliction of emotional distress.

22 **III. CONCLUSION**

23 For the reasons above, the Court **GRANTS** Plaintiff’s Motion to Dismiss.
24 Defendant may file a First Amended Counterclaim within fourteen (14) days of the entry
25 of this Order.

1 Dated this 28th day of June, 2023.

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The Honorable Richard A. Jones
United States District Judge

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